

**2005 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB342)**

Received: **09/22/2005**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Lee Nerison (608) 266-3534**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - motor vehicles**  
**Transportation - traffic laws**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Nerison@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Exempting from certain motor carrier requirements farm trucks under 26,000 pounds in intrastate commerce and vehicles pulling horse trailers

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 09/23/2005	kfollett 09/27/2005		_____			State
/1			pgreensl 09/27/2005	_____	Inorthro 09/27/2005	Inorthro 09/27/2005	

FE Sent For:

<END>

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/?	agary	llkf 9/27		_____ _____			

FE Sent For:

<END>

9/21/05

~~REDACTED~~  
~~REDACTED~~  
~~REDACTED~~

MTG w/ Sott, Mark Tette- (Rep. Huettsch off.)  
 Rep. Nerz

• farm trucks under 26,000 lbs.  
 in intrastate commerce

(b/w 10,000 lb. & 26,000 lb.)

• raise 10,000 lb. limit to 26,000  
 & limit only to intrastate

→ 49 CFR 350.341

• want a sub w/analysis

• intrastate : ID  
- lift to 26,000

• exempt all vehicles up to 26,000  
in intrastate commerce

• include horse amendment

→ farm truck & haul up to  
26,000 lbs. in intrastate  
commerce + any vehicle  
under 26,000 pulling horse  
trailer

• exempt from fed ID &  
motor carrier standards

instructions

**Gary, Aaron**

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**From:** Loomans, Scott  
**Sent:** Wednesday, September 21, 2005 11:21 AM  
**To:** Gary, Aaron  
**Cc:** Jefferson, Mark  
**Subject:** AB 342 and amendments

Would you be available to get together with Rep. Nerison and possibly Mark Jefferson from Rep. Huebsch's office tomorrow afternoon to talk about AB 342 and the amendments that we have? I think it would be in the Assembly parlor in the afternoon during session (unless people are less willing than normal to leave the floor).

The issue of whether-or-not we will lose federal money is not officially resolved but we are getting signs from Washington that we would be able to exempt farm trucks under 26,000 pounds and engaged in intrastate commerce. Attached is some of the discussion that's been going on between our office, Congressman Green, and US DOT's congressional liaison. Mark Jefferson has been having similar discussions with Petri's office. They say they will get something on US DOT letterhead but we are still waiting and may want to at least get the bill to rules committee.

I think what I was calling the "Minnesota Amendment" is pretty close to covering us based on what we are hearing from Congress, 0871/1. That might be what we need but we should get together to tie up loose ends as best as we can.

Do you think we should have Phil Cardis over?

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**From:** Roehl, Dan [mailto:Dan.Roehl@mail.house.gov]  
**Sent:** Thursday, September 01, 2005 12:54 PM  
**To:** Loomans, Scott  
**Subject:** FW: Follow up

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**From:** Roscoe.Mellor@dot.gov [mailto:Roscoe.Mellor@dot.gov]  
**Sent:** Thursday, September 01, 2005 1:47 PM  
**To:** Roehl, Dan  
**Subject:** FW: Follow up

hey dan - pls see below...

Ross:

As always, thanks for your help. Two quick follow up questions.

1. Assuming Wisconsin doesn't have a law requiring a DOT number for intrastate purposes (they currently do), how would law enforcement determine if a farmer is in violation if they are stopped in Wisconsin? Would the burden of proof fall on the farmer or on law enforcement?

Answer - The burden of proof that a carrier is subject to the Federal Motor Carrier Safety Regulations or the State equivalent regulations is on the law enforcement officer. With respect to determining if a vehicle meets the weight threshold, this can generally be done by checking the gross vehicle weight rating (GVWR) on a data plate on the truck or trailer, or by weighing the vehicle.

2. It is my understanding that Wisconsin receives funds from USDOT to help enforce compliance with this policy. If the state repeals its rule requiring a DOT number for intrastate purposes, would they lose the grant funding?

Answer - If the State were to repeal its rule requiring a DOT number for intrastate purposes, they would not lose any grant funding.

Thanks again.

Dan

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**From:** Roscoe.Mellor@dot.gov [mailto:Roscoe.Mellor@dot.gov]

**Sent:** Tuesday, August 16, 2005 3:00 PM

**To:** Roehl, Dan

**Subject:** Follow up

1) Does the 10,001lbs include the weight of the goods/trailer it is transporting?

2) what is the definition of "interstate commerce"?

1) Yes. If the truck is pulling the trailer it would be the combination of the truck and the trailer or the truck and the goods it is carrying. The 10k lb limit is determined by looking at the vehicle's gross vehicle weight rating (GVWR). The 10,001 lbs. is the Gross Vehicle Wate Rating (GVWR) that is specified by the manufacturer. Essentially, the maximum weight (vehicle + plus total cargo amount) that the vehicle is designed to carry. So a vehicle may weigh less than 10k lbs empty, but since the GVWR is over 10k lbs, the vehicle is subject to the regs. For vehicles that don't have a GVWR (either the manufacturer's plate has been removed, is illegible, etc.), or appear to be loaded above their GVWR (if it is below 10k lb) roadside officers are instructed to weigh the vehicle if they think it is subject to the regs. Only in those cases will the manufacturer's GVWR not be used.

2)

**Definition of interstate commerce.** The Motor Carrier Safety Act of 1984 provides a good definition:

"(4) 'interstate commerce' means trade, traffic, or transportation in the United States between a place in a State and --

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States."

49 U.S.C. 31132(4).

This means you're in interstate commerce if you travel across State lines or an international border in some kind of vehicle (as implied by the terms "traffic" and "transportation"). The MCSA of 1984 limits the authority of FMCSA to "commercial motor vehicles" (CMVs) operating in interstate commerce. The relevant part of the definition of a CMV is this:

"(1) 'commercial motor vehicle' means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle --

(A) has a gross vehicle weight rating [GVWR] or gross vehicle weight [GVW] of at least 10,001

pounds, whichever is greater . . ."

49 U.S.C. 31132(1).

In other words, a vehicle is a CMV if it operates in interstate commerce and either weighs 10,001 pounds or more, or is rated by the manufacturer for a gross weight of 10,001 pounds or more. If you have a truck with a GVWR of 9,000 pounds, but you (over)load it to 11,000 pounds, then it's a CMV when you drive it across State lines or an international border; the truck itself, the driver, and the owner are subject to various parts of the Federal Motor Carrier Safety Regulations (FMCSRs). And if you have a truck with a GVWR of 11,000 pounds, but you never load it beyond 9,000 pounds, it's still a CMV when you cross State or international borders, and the vehicle, driver, and owner are still subject to the FMCSRs.

"'Commerce' is a broad term. It generally means the exchange of goods and services between individuals, companies, cities, States or nations. Since the Federal Motor Carrier Safety Administration is charged with improving truck safety, Congress used a definition of 'interstate commerce' that focuses on the means of exchanging those goods or services, i.e., truck 'traffic' or truck 'transportation.' Under the definition, you're in interstate commerce if you travel across State lines or an international border in some kind of vehicle. The MSA of 1984 limits the authority of FMCSA to 'commercial motor vehicles' (CMVs) operating in interstate commerce. The relevant part of the definition of a CMV is this:"

**What was FMCSA instructed to regulate when we were established?** The Motor Carrier Safety Improvement Act of 1999 said this:

"(f) Powers and duties. -- The Administrator [of the Federal Motor Carrier Safety Administration] shall carry out --

(1) duties and powers related to motor carriers or motor carrier safety vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249-1250) . . ." (49 U.S.C. 113(f)).

The statutes most relevant to this inquiry are chapter 311 (general authority to regulate owners and operators of CMVs, as defined above, i.e., trucks with a GVW or GVWR of 10,001 pounds or more); chapter 313 (authority to require commercial driver's licenses (CDL) for drivers of trucks with a GVW or GVWR of 26,001 pounds or more, and for certain passenger and hazmat vehicles, and to require the States to issue CDLs); and chapter 315 (very broad authority to regulate the safety and equipment of private and for-hire motor carriers; private carriers transport their own property, for-hire carriers transport property for others).

**Gary, Aaron**

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**From:** Jefferson, Mark  
**Sent:** Wednesday, September 21, 2005 4:44 PM  
**To:** Gary, Aaron  
**Cc:** Loomans, Scott  
**Subject:** RE: AB 342 and amendments

Aaron and Scott:

The contact person for the Federal DOT legal office I just referred to in our meeting is below:

Judy Rutledge  
(I believe she's Chief Legal Council)  
202-493-0349



2005 - 2006 LEGISLATURE

LRB-2356/1

ARG:cmh:R

Assembly Substitute Amendment,  
To **2005 ASSEMBLY BILL 342**

April 19, 2005 - Introduced by Representatives NERISON, AINSWORTH, PETROWSKI, HAHN, OTT, LAMB, DAVIS, GRONEMUS, VRUWINK, ALBERS, M. WILLIAMS, LOEFFELHOLZ, TOWNS, BALLWEG, BIES, BOYLE, FREESE, GUNDERSON, GUNDRUM, HINES, HUNDERTMARK, KESTELL, KLEEFISCH, LEMAHIEU, MUSSER, OWENS, PETTIS, PRIDEMORE, SCHNEIDER, TOWNSEND, WARD and WOOD, cosponsored by Senators HARSDOFF, KAPANKE, BROWN, OLSEN, A. LASEE and GROTHMAN. Referred to Committee on Transportation.

- 1 **AN ACT to renumber and amend 194.38; to amend 110.075 (6) and 194.43; and**  
2 **to create 194.05 (4) and 194.38 (2) of the statutes; relating to: private motor**  
3 **carriers transporting livestock.**

**Analysis by the Legislative Reference Bureau**

Under current law, with limited exceptions, a person who transports passengers or property for hire by motor vehicle on the highways is a common motor carrier, a person who transports only property for hire by motor vehicle on the highways is a contract motor carrier, and any other person who transports property by motor vehicle on the highways is a private motor carrier. With limited exceptions, a common motor carrier or contract motor carrier must operate under a certificate or license (certificate of authority) issued by the Department of Transportation (DOT) or issued under federal law authorizing operation of a vehicle as a common motor carrier or contract motor carrier. Various state laws, including laws relating to vehicle marking and vehicle inspection, govern private motor carriers as well as common motor carriers and contract motor carriers. Federal law, including federal motor carrier safety standards established under regulations promulgated by the Federal Motor Carrier Safety Administration, also governs common motor carriers, contract motor carriers, and private motor carriers. DOT has authority under state law to promulgate rules regulating the operation of all motor carriers, including rules implementing federal motor carrier safety standards.

Current law also requires all motor vehicles operated on a highway, including vehicles operated by motor carriers, to meet specified vehicle equipment standards.

**ASSEMBLY BILL 342**

Upon request, any operator of a motor vehicle must submit the vehicle to inspection by a vehicle inspector or traffic officer to determine compliance with vehicle equipment standards and, if the vehicle is found to be unsafe for operation, the inspector or officer may order the vehicle to be removed from the highway and not operated except as necessary for repair. DOT may establish standards and adopt rules related to vehicle inspections, including rules implementing federal motor carrier equipment standards.

*substitute amendment*  
*insert ANAL-R*  
This bill exempts from regulation as a motor carrier any ~~person transporting livestock in a farm truck or dual purpose farm truck combined with any semitrailer or farm trailer when the transportation is provided by the registered owner of the farm truck or dual purpose farm truck and is not for hire.~~ The bill prohibits DOT from promulgating any rule under which certain federal motor carrier safety standards, including equipment standards, are applicable to, or enforceable with respect to, these vehicles ~~transporting livestock.~~

*combinations*  
For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 110.075 (6) of the statutes is amended to read:

2           110.075 (6) The secretary shall set standards and adopt rules to establish a  
3           plan of inspection to implement the inspection program provided by this section.  
4           Nothing in this section shall permit the department to promulgate any rule under  
5           which the provisions of 49 CFR 393 and 396 are applicable to, or enforceable with  
6           respect to, the transportation of livestock by any farm truck or dual purpose farm  
7           truck combined with any semitrailer or farm trailer when such transportation is  
8           provided by a private motor carrier to whom the farm truck or dual purpose farm  
9           truck is registered under ch. 341.

10           **SECTION 2.** 194.05 (4) of the statutes is created to read:

11           194.05 (4) This chapter shall not apply to the transportation of livestock by any  
12           farm truck or dual purpose farm truck combined with any semitrailer or farm trailer

**ASSEMBLY BILL 342**

1 when such transportation is provided by a private motor carrier to whom the farm  
2 truck or dual purpose farm truck is registered under ch. 341.

3 **SECTION 3.** 194.38 of the statutes is renumbered 194.38 (1), and 194.38 (1) (e),  
4 as renumbered, is amended to read:

5 194.38 (1) (e) To act in accordance with 49 USC 14504 by making any finding,  
6 determination and otherwise doing any other thing necessary to proceed under that  
7 statute. Nothing in this subsection paragraph shall permit the department to extend  
8 the length or weight of motor vehicles.

9 **SECTION 4.** 194.38 (2) of the statutes is created to read:

10 194.38 (2) Nothing in this section shall permit the department to promulgate  
11 any rule under which the provisions of 49 CFR 391, 392, 395, and 397 are applicable  
12 to, or enforceable with respect to, the transportation of livestock by any farm truck  
13 or dual purpose farm truck combined with any semitrailer or farm trailer when such  
14 transportation is provided by a private motor carrier to whom the farm truck or dual  
15 purpose farm truck is registered under ch. 341.

16 **SECTION 5.** 194.43 of the statutes is amended to read:

17 **194.43 Private motor carriers; regulation by department.** The Except  
18 as provided in s. 194.05 (4), the department may regulate the operations of private  
19 motor carriers, including the power to designate from time to time the public  
20 highways over which private motor carrier vehicles may or may not be operated and  
21 to designate the time that such vehicles may or may not be operated thereon so as  
22 to prevent congestion which shall affect the safety of persons and property upon such  
23 public highways; to require the display of satisfactory evidence that such vehicle is  
24 not being used for common or contract motor carrier purposes; and to prescribe

**ASSEMBLY BILL 342**

**SECTION 5**

1 reasonable and necessary rules and regulations for the safety of operation of private  
2 motor carriers.

3 **SECTION 6. Initial applicability.**

4 (1) This act first applies to vehicles <sup>operated</sup> ~~transporting~~ livestock on the effective date  
5 of this subsection.

6 (END)

J. Note

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0220/lins  
ARG:.....

**INSERT 1-3:**

*no #* exempting from motor carrier regulations certain vehicle combinations operated in intrastate commerce.

**INSERT ANAL-A:**

*(no P)* These laws govern motor carriers regardless of whether the motor carrier is operating a commercial motor vehicle (CMV). A CMV is a motor vehicle designed or used to transport passengers or property and that is: a single vehicle with a gross vehicle weight rating, registered weight, or actual gross weight of more than 26,000 pounds; a vehicle combination with a gross combination weight rating, registered weight, or actual gross weight of more than 26,000 pounds (inclusive of a towed unit of more than 10,000 pounds); a vehicle designed to transport or actually transporting the driver and 15 or more passengers; or a vehicle transporting certain hazardous or toxic materials.

**INSERT ANAL-B:**

*(no P)* , or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a vehicle designed to transport or actually transporting the driver and 15 or more passengers or a vehicle transporting certain hazardous or toxic materials, and the vehicle combination is operated solely in intrastate commerce. The substitute amendment specifically exempts these vehicle combinations from any motor carrier vehicle marking requirement.

**INSERT 2-7:**

*(no P)* , or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**INSERT 2-9:**

**SECTION 1.** 194.09 of the statutes is amended to read:

**194.09 Marking carrier vehicles.** Each motor vehicle operated by a common motor carrier of property or of passengers, a contract motor carrier or a private motor carrier shall be plainly marked in such manner as the department may prescribe, so as to identify such motor vehicle as being operated pursuant to this chapter. This section does not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

History: 1977 c. 29 s. 1654 (7) (a); 1993 a. 16.

**INSERT 2-12:**

(no P) , or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**INSERT 3-13:**

(no P) , or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0220/1dn

ARG: *lgf*

*Date*

ATTN: Scott Loomans

Please review the attached draft carefully to ensure that it is consistent with your intent.

X I believe the information provided for the drafting instructions, discussed at our meeting and derived from information supplied by the US DOT, is basically another way of saying that the bill will not conflict with federal law if it applies only to non-commercial motor vehicles operating in intrastate commerce. I have prepared this draft along the lines of the drafting instructions at our meeting, but I believe a better way to accomplish the same result would be to say, for example in created s. 194.05 (4), "This chapter shall not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination is operated solely in intrastate commerce and is not, and does not include, a commercial motor vehicle, as defined in s. 340.01(8)."

The creation of s. 194.38 (2) in the attached draft is arguably unnecessary now, but I have retained it from AB-342. I have added a reference to 49 CFR 390 so that the federal citations include federal vehicle marking provisions under 49 CFR 390.19 and 390.21.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0220/1dn  
ARG:kjf:pg

September 27, 2005

ATTN: Scott Loomans

Please review the attached draft carefully to ensure that it is consistent with your intent.

I believe the information provided for the drafting instructions, discussed at our meeting and derived from information supplied by the US DOT, is basically another way of saying that the bill will not conflict with federal law if it applies only to noncommercial motor vehicles operating in intrastate commerce. I have prepared this draft along the lines of the drafting instructions at our meeting, but I believe a better way to accomplish the same result would be to say, for example in created s. 194.05 (4), "This chapter shall not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination is operated solely in intrastate commerce and is not, and does not include, a commercial motor vehicle, as defined in s. 340.01 (8)."

The creation of s. 194.38 (2) in the attached draft is arguably unnecessary now, but I have retained it from AB-342. I have added a reference to 49 CFR 390 so that the federal citations include federal vehicle marking provisions under 49 CFR 390.19 and 390.21.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us